

MSA UPDATE

TAKING CONTROL OF THE MSA PROCESS

It is commonly known that the MSA process is handled by a morass of semi-related entities all under the CMS umbrella. These entities (COBC, CMS, & WCRC) purport to be collaborating to process, review, and approve MSA proposals. It would be helpful if they published a set of specific rules and regulations to help us navigate an MSA proposal through the system, but they don't. It is no wonder then that many attorneys are eager to have opposing counsel take responsibility for obtaining an MSA. Before you decide to turn the reigns over to opposing counsel, be aware of this very important (and draconian) CMS rule:

The party that files the MSA proposal is the *only* party that CMS will communicate with concerning the entire MSA approval process.

This means that if the employer submits the MSA proposal, then CMS will not communicate with claimant's attorney *or the claimant*. Likewise, if the claimant submits an unreasonably high MSA proposal, CMS will not communicate with the employer about the particulars of the proposal. CMS will accept letters and documents from *either party*, but it will only communicate with the party that it designates as the "**submitter**." It has been my experience that having direct contact with CMS is very beneficial in having an MSA timely approved.

Therefore, before you turn over the responsibility to the other party please keep in mind that if you are the submitter:

1. You may set the *amount* of the proposed MSA;
2. You may submit the MSA at an time advantageous for your client;
3. CMS will contact you (*and only you*) if there are any questions about or problems with the submission;
4. You will have the opportunity to explain unusual or inconsistent medical records, payout histories discrepancies, or other abnormalities to CMS in a light that is beneficial to your client;
5. You control what records are submitted to CMS (initially);
6. You may control (to some extent) how quickly (or slowly) CMS approves the MSA; and
7. You can communicate with and possibly challenge CMS if it approves a different allocation than what you proposed.

If you are not the submitter, then you can do none of the above. So keep this in mind the next time this decision comes up. If you decide that it is in your client's best interest to control the MSA process, but you do not want to deal with it, please consider our services. Our law firm has handled hundreds of MSAs and would be happy to help you with yours.

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GETTING YOUR CASE SETTLED.SM*

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